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DOC #:

DATE FILED: 9-8-10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRANDON WILLIAMS,

Plaintiff,

- against -

MUNICIPAL CORPORATION, et al.,

Defendants.
-----X

VICTOR MARRERO, United States District Judge.

10 Civ. 164 (VM)

DECISION AND ORDER

I. BACKGROUND

By Order dated August 17, 2010, Magistrate Judge Ronald L. Ellis, to whom this matter had been referred for supervision of pretrial proceedings, issued a Report and Recommendation (the "Report"), a copy of which is attached and incorporated herein, recommending that the complaint of plaintiff Brandon Williams ("Williams") herein be dismissed for failure to prosecute. Williams failed to file timely objections to the Report by the due date of September 3, 2010. For the reasons stated below, the Court adopts the recommendation of the Report in its entirety.

II. STANDARD OF REVIEW

A district court evaluating a Magistrate Judge's report may adopt those portions of the report to which no "specific, written objection" is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law. Fed. R. Civ. P. 72(b); see also Thomas v. Arn, 474 U.S. 140, 149 (1985); Greene v. WCI Holding Corp., 956 F. Supp. 509, 513 (S.D.N.Y. 1997). "Where

a party makes a 'specific written objection ... after being served with a copy of the [magistrate judge's] recommended disposition,' however, the district court is required to make a de novo determination regarding those parts of the report." Cespedes v. Coughlin, 956 F. Supp. 454, 463 (S.D.N.Y. 1997) (citing United States v. Raddatz, 447 U.S. 667, 676 (1980)); Fed. R. Civ. P. 72(b). The Court is not required to review any portion of a Magistrate Judge's report that is not the subject of an objection. See Thomas, 474 U.S. at 149. A district judge may accept, set aside, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge as to such matters. See Fed. R. Civ. P. 72(b); DeLuca v. Lord, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994).

III. DISCUSSION

Having conducted a review of the full factual record in this litigation, including the pleadings, as well as the Report and applicable legal authorities, the Court concludes that the findings, reasoning, and legal support for the recommendations made in the Report are not clearly erroneous or contrary to law and are thus warranted. Accordingly, for substantially the reasons set forth in the Report the Court adopts the Report's factual and legal analysis and determinations, as well as its substantive recommendation, in their entirety as the Court's ruling.

IV. ORDER

For the reasons discussed above, it is hereby

ORDERED that the Report and Recommendation of Magistrate Judge Ronald L. Ellis dated August 17, 2010 (Docket No. 8) is adopted in

its entirety, and the Clerk of Court is directed to dismiss the complaint of plaintiff Brandon Williams herein and to terminate any pending motions and close this case.

SO ORDERED.

Dated: NEW YORK, NEW YORK
8 September 2010

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Victor Marrero
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRANDON WILLIAMS,

Plaintiff,

- against -

CITY OF NEW YORK, et al.,

Defendants.

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REPORT AND
RECOMMENDATION

10 Civ. 0164 (VM) (RLE)

To the HONORABLE VICTOR MARRERO, U.S.D.J.:

By Order dated July 13, 2010, Plaintiff Brandon Williams was directed to **SHOW CAUSE** by August 13, 2010, why this case should not be dismissed. Williams failed to respond to the Order. For the reasons which follow, I recommend that the case be **DISMISSED** for failure to prosecute.


Williams commenced this action on January 11, 2010. Pursuant to Rule 4 of the Federal Rules of Civil Procedure, Williams's deadline to serve Defendants was May 11, 2010. On April 22, 2010, the Court received a letter from Williams explaining that he had only received notice of the deadline for service on April 1, 2010. Accordingly, this Court issued an order extending Williams's time to serve to June 30, 2010. When Williams failed to serve Defendants by the new deadline, the Court directed him to show cause why his case should not be dismissed.

Based on the information in the record, this Court recommends the case be **DISMISSED** for failure to prosecute. A district court may *sua sponte* dismiss a case for Plaintiff's failure to prosecute. *See, e.g., Link v. Wabash Railroad Co.*, 370 U.S. 626 (1962) (cited as establishing framework for reviewing district court's *sua sponte* dismissal for failure to prosecute); *see also* FED. R. CIV. P. 41(b). Further, case law holds failure to prosecute "can evidence itself . . . in an

action lying dormant with no significant activity to move it” *Gibbs v. Hawaiian Eugenia Corp.*, 966 F.2d 101, 109 (2d Cir. 1992) (quoting *Lyell Theatre Corp. v. Loews Corp.*, 682 F.2d 37, 42 (2d Cir. 1982)).

Pursuant to Rule 72, Federal Rules of Civil Procedure, the parties shall have fourteen (14) days after being served with a copy of the recommended disposition to file written objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court and served on all adversaries, with extra copies delivered to the chambers of the Honorable Victor Marrero, 500 Pearl Street, Room 660, and to the chambers of the undersigned, Room 1970. Failure to file timely objects shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985); *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); 28 U.S.C. § 636(b)(1) (West Supp. 1995); FED. R. CIV. P. 72, 6(a), 6(d).

SO ORDERED this 17th day of August 2010
New York, New York


The Honorable Ronald L. Ellis
United States Magistrate Judge

Copies of this Report and Recommendation were sent to:

Pro se Plaintiff:
Brandon Williams
#349-09-14715
1600 Hazen Street
East Elmhurst, NY 11370